



Appeal Decision

Site visit made on 25 October 2023

by S Rawle BA (Hons) Dip TP Solicitor

an Inspector appointed by the Secretary of State

Decision date: 08 December 2023

Appeal Ref: APP/P1805/W/23/3319415

**Lower House Farm, Border Fencing, Stoney Lane, Alvechurch,
Worcestershire B60 1LY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Jarvis Construction Group Ltd against the decision of Bromsgrove District Council.
 - The application Ref 22/00822/FUL, dated 13 June 2022, was refused by notice dated 22 March 2023.
 - The development proposed is the re-development of former fencing and timber building construction business for residential development.
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Decision

1. The appeal is allowed and planning permission is granted for the re-development of former fencing and timber building construction business for residential development at Lower House Farm, Border Fencing, Stoney Lane, Alvechurch, Worcestershire B60 1LY in accordance with the terms of the application, Ref 22/00822/FUL, dated 13 June 2022, subject to the conditions in the attached schedule.

Preliminary Matters

2. Although the appeal site is located within the Green Belt, the Council consider that the proposal would not amount to inappropriate development. In reaching that view it highlights that the scheme would comply with paragraph 149 (g) of the National Planning Policy Framework (the Framework) as it would involve the partial or complete redevelopment of previously developed land that would not have a greater impact on the openness of the Green Belt than the existing development. The Council also consider that it would comply with paragraph 150 (d) as the retention of an existing agricultural style building and its conversion to a residential unit would involve the re-use of a building which is of a permanent and substantial construction, it would preserve openness and would not conflict with the purposes of including land within the Green Belt. I agree with that analysis.

Main Issue

3. The main issue is whether the appeal site is an appropriate location for the proposed dwellinghouses having regard to the relevant development plan policies relating to development within rural areas.

Reasons

4. The appeal site comprises a number of large buildings formerly used as part of a fencing and timber construction business and associated storage areas and

hardstanding. I observed that the appeal site is now redundant, some of the buildings are in a poor state of repair and parts of the site are overgrown and therefore overall, it appears visually unattractive.

5. Although the appeal site forms part of a cluster of buildings, including Lower House Barn and The Lower House it is located outside the settlement boundary and consequently the appeal site is within the open countryside.
6. Policy BDP1 of the Bromsgrove District Plan 2011-2030 adopted January 2017 (BDP) sets out sustainable development principles and amongst other things advises that regard will be had to accessibility to public transport options. The policy also deals with situations where relevant policies are out of date at the time of making the decision, which is a matter I will return to later in the decision. The District's settlement hierarchy is set out in Policy BDP2 of the BDP, and the appeal site does not meet any of the four main facets for the delivery of housing to meet the needs of the District.
7. The nearest settlement is about 1.5 kilometres away. There is a lack of street lighting and footpaths along Stoney Lane, which is a fast-flowing classified road. As a result, future occupants are very unlikely to walk to the local settlement to access services and facilities. Further, given the nature of the road, it would not encourage occupants to cycle to the nearest settlements either. The appeal site is not well served by or accessible to public transport. As a result, future occupiers of the proposed dwellings would be reliant on the private car. Overall, local plan policies do not support the introduction of dwellings at the appeal site.
8. Contrary to paragraph 105 of the Framework, the proposed development would not be located where the need to travel would be limited. As outlined, the proposed development is not within a reasonable walking or cycling distance of any settlement and there is no compelling information about how the proposal would make any meaningful contribution to enhance or maintain the vitality of the rural community.
9. The appeal site is located some distance away from other significant development or settlements in all directions with intervening fields. As such I consider that the proposal would result in the introduction of isolated homes in the countryside. Paragraph 80 of the Framework sets out that decisions should avoid such development unless certain criteria apply, including where it would re-use redundant and disused buildings and would enhance its immediate setting.
10. As outlined above, the appeal site appears visually unattractive, and the proposal would result in a significant improvement thereby enhancing its immediate setting. This combined with the fact that the proposal would re-use a redundant and disused building means that the proposal does appear to accord with one of the circumstances which would allow a relaxation of the presumption against allowing isolated homes within the countryside. Given this factor, I consider that although the proposal would not be located in an appropriate location having regard to the settlement hierarchy, the harm ascribed to this would be moderate given that the Framework allows for development such as that proposed here being located within an isolated location.

11. In reaching that view I have taken account of the enforcement planning appeal that has been brought to my attention,¹ where the Inspector ascribed substantial weight to the fact that the development in that case was not located in a suitable location. However, the circumstances involved are materially different as the Inspector in that case found that the proposal would result in harm to the character and appearance of the area. Having specifically considered paragraph 80 of the Framework, he found that the proposal before him would not lead to an enhancement of its immediate setting and was therefore contrary to paragraph 80 of the Framework.
12. I therefore conclude that the proposed dwellinghouses would not be located in an appropriate location having regard to the settlement hierarchy and would not accord with relevant development plan policies relating to development within rural areas resulting in moderate harm. It would therefore conflict with the relevant parts of Policies BDP1 and BDP2 which among other things seek to ensure the application of sustainable development principles, including having regard to accessibility to public transport options and that proposals for new development should be located in accordance with the settlement hierarchy.
13. The proposal would also be at odds with paragraphs 8, 79, 104 and 105 and 110 of the Framework which seek to ensure proposals are located in the right place, enhance or maintain the vitality of rural communities, promote walking, cycling and public transport, ensure development is focused on locations which limit the need to travel and offer a genuine choice of transport modes. For the reasons set out above, I consider that the proposal would not conflict with paragraph 80 of the Framework.
14. The Council have also cited paragraph 108 of the Framework in their reasons for refusal which deals with parking standards. However, as there is no objection in relation to the number of parking spaces proposed, this paragraph does not appear to be relevant to the determination of the appeal.

Other Matters

15. Lower House Barn, which is adjacent to the site is a Grade II listed building and is a designated heritage asset. In addition, a smaller barn, proposed to be retained and converted, has been identified by the Council as a non-designated heritage asset given its age and historic association with Lower House Barn.
16. I have had special regard to the desirability of preserving the setting of Lower House Barn as well as the impact of the proposal on the non-designated heritage asset. The Council acknowledge that the appellant has worked closely with its Conservation Officer to develop a sensitive proposal that reflects a bespoke farmstead inspired scheme and it considers that the proposal accords with the Planning (Listed Buildings and Conservation Areas) Act 1990.
17. As outlined above, some buildings on the appeal site, including the smaller barn proposed to be retained are in a poor state of repair and the site is overgrown and consequently appears visually unattractive. This has a detrimental impact on the setting of Lower House Barn and due to the current state of repair of the smaller barn a direct detrimental impact on a non-designated heritage asset. The proposal would improve the visual appearance of the area and would have a positive effect on both the setting of a designated

¹ Appeal Ref - APP/P1805/C/22/3311435

heritage asset and on the non-designated asset itself. These public benefits weigh moderately in favour of the proposal.

18. As recognised by the Council the former commercial use of the site would have generated vehicular trips to and from the site but indicate that it has not been demonstrated that there would be significantly less associated with the proposed development that would result in substantial improvements to the highway network and gave this matter limited weight.
19. Taking account of the available evidence particularly the information provided within the Transport Statement, the proposal would generate less traffic than the previous use and would prevent the evident conflict between the employment site and other highway users in the form of on road parking and trucks being unloaded off site. However, that use has terminated and given the significant marketing of the appeal site it is unlikely to recommence. That said, I agree with the Council that it cannot be automatically assumed the appeal site would become abandoned if this proposal does not go ahead. It follows that any future use would also generate a certain level of traffic in this location. But given that the traffic generated and the impact this would have on the highway network is impossible to predict, I agree with the Council that this matter can only be given limited weight.

Planning Balance

20. For the reasons I have already set out, I have identified conflict with the relevant parts of Policies BDP1 and BDP2 of BDP. The appeal proposal would therefore be contrary to the development plan.
21. The Council accepts that its current housing land supply stands at 3.3 years, which represents a shortfall against the required five years. Paragraph 11(d) of the Framework is therefore engaged, and the policies which are most important for determining the application are deemed to be out of date for the purposes of paragraph 11.
22. The proposed development would not harm any areas or assets of particular importance. Therefore, paragraph 11(d)(i) of the Framework is not engaged.
23. Paragraph 11(d)(ii) of the Framework confirms that in such circumstances, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
24. The development would provide five additional dwellings in a District where there is an identified shortfall in housing land supply. The Framework seeks to significantly boost the supply of homes. The benefit of five additional dwellings which makes optimal use of the appeal site's potential on previously developed land, attracts moderate weight. There would also be some economic benefits during the construction and occupation stages but, given the limited scale of the proposed development, I accord this benefit limited weight. Further, I have ascribed moderate weight to the fact that the proposal would improve the visual appearance of the area and would have a positive effect on both the setting of a designated heritage asset and on the non-designated asset itself.
25. When assessed against the policies in the Framework, the adverse impacts of the development would be moderate and would not significantly and demonstrably outweigh the benefits of the proposal when assessed against the

policies in the Framework taken as a whole. As such, the presumption in favour of sustainable development set out in the Framework applies. Given that finding, it follows that the proposal would also accord with Policy BDP 1.4 of the BDP which mirrors paragraph 11(d)(ii) of the Framework.

26. In reaching that view I have again taken account of the previous enforcement appeal decision that relates to a nearby site. I have set out above why that case is materially different when explaining the weight I have ascribed to the harm I identified in relation to the main issue. I would only add here that the development subject of the previous appeal was in relation to one dwelling and therefore the contribution to housing supply was also materially different.
27. Moreover, in addition to ascribing substantial weight to his finding that the dwelling was not in a suitable location, the previous Inspector also found that the dwelling would harm the character and appearance of the area and that it failed to provide satisfactory living conditions for existing and future occupiers, and he ascribed considerable weight to these harms. It follows that the ingredients of the planning balance and the respective weight given to the benefits and harms by the previous Inspector were so materially different to the situation before me that the previous appeal decision does not alter my view in relation to this proposal.

Conditions

28. I have had regard to the conditions suggested by the Council and amended and reordered them as necessary in the interests of precision and clarity, as well as to comply with advice in the Framework and Planning Practice Guidance (PPG). It is necessary to impose some pre-commencement conditions and the appellant has confirmed that they agree to such conditions.
29. A condition is needed to secure compliance with the approved plans for the avoidance of doubt and in the interests of proper planning. To ensure any archaeological remains of significance are protected it is necessary to include a pre-commencement condition to undertake an investigation and implementation scheme. To ensure that any contamination risk is appropriately addressed, it is necessary to impose a pre-commencement condition to undertake an appropriate investigation and implementation of a remediation scheme if necessary.
30. A condition requiring that details of materials and other important features of the development, including rainwater goods, termini for services, windows, rooflights, doors, ridges, eaves and abutments/junction to be used is necessary in the interest of the appearance of the scheme and the surrounding area. However, given I am going to impose a condition in relation to boundary treatment it is unnecessary to impose a condition requiring that details of external works and boundary treatment at scale 1:10 are submitted. It is necessary to attach a condition requiring the approval of a surface water drainage scheme to ensure that an appropriate drainage scheme is in place and that the development does not increase flood risk on or off-site.
31. To control the finished floor level relative to the adjacent road a condition is required to ensure satisfactory drainage conditions. However, given that the road has different levels, it is not necessary to specify a specific level for the road. In the interests of the appearance of the scheme it is necessary to impose conditions to ensure appropriate landscaping and boundary treatment

is implemented. In the interests of ensuring protecting species are not harmed as a result of the development it is necessary to attach an appropriate condition.

Conclusion

32. The proposed development conflicts with the development when read as a whole. For the reasons given above, I have attached moderate weight to this conflict. The proposal benefits from the presumption in favour of sustainable development. This is a material consideration of sufficient weight in this instance to indicate that planning permission should be granted notwithstanding the conflict with the development plan.
33. I therefore conclude that in the specific circumstances of this case, the material considerations indicate that the decision should be taken other than in accordance with the development plan. Accordingly, the appeal is allowed.

S Rawle

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 022-3789 Drg No 01 Rev B; 022-3789 Drg No 02 Rev D; 022-3789 Drg No 03 Rev D; 022-3789 Drg No 04 Rev C; 022-3789 Drg No 05 Rev C; 022-3789 Drg No 06 Rev B; and 022-3789 Drg No 09 Rev B.
- 3) No demolition/development shall take place until a programme of archaeological work, including a written scheme of investigation shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions - and:
 - i) the programme and methodology of site investigation and recording;
 - ii) the programme for post investigation assessment;
 - iii) the provision to be made for analysis of the site investigation and recording;
 - iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - v) the provision to be made for archive deposition of the analysis and records of the site investigation;
 - vi) the nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.
- 4) No demolition/development shall take place other than in accordance with the written scheme of investigation approved under condition 3.

- 5) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures. Before the development is first occupied a verification report for all remediation works shall be submitted to and approved in writing by the local planning authority.
- 6) No development above ground floor level shall commence until the following details have been submitted to and approved in writing by the local planning authority;
- details, including samples of the form, colour and finish of the materials to be used on the external surfaces of the walls and roofs;
 - position and details of all rainwater goods and external termini for services;
 - details of the proposed windows, rooflights and doors at scale 1:5; and
 - details of any ridge, eaves and abutments/junctions at scale 1:10;

Development shall be carried out in accordance with the approved details/samples.

- 7) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,

- iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 8) Finished floor levels within the development shall be set no lower than 300mm above the adjacent road level.
- 9) No dwelling shall be occupied until there shall have been submitted to and approved in writing by the local planning authority a scheme of hard and soft landscaping. The landscaping works shall be carried out in accordance with the approved details and shall be implemented no later than 12 months of occupation of any of the dwellings hereby permitted. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 10) Prior to the first occupation of any of the dwellings hereby permitted details of the boundary treatment to be provided on site shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 11) The development hereby permitted shall be carried out in accordance with the Conclusions and Recommendations of the Preliminary Ecological Appraisal and Bat Surveys carried out by the Worcestershire Wildlife Consultancy August 2021, Amended June 2022, Project Ref; 2021/076 A&B v2.